

Attorney General Ballast Water Testimony

Good afternoon and thank you Congresswoman Miller, Congressman Westmoreland, and Congressman Lynch for inviting me here today. I would also like to thank Anchor Bay High School for hosting this hearing.

When we discuss pollution, most of us probably think of smog, or chemical waste, or acid rain. But for me, the most memorable form of pollution stems from my trips as a young boy to Michigan's shores, and the stinking masses of rotting alewives that literally covered the beaches. Alewives are a non-native invasive species, and for years used to negatively affect Michigan's fisheries. For me, the memory of the alewives' littering the beaches is a powerful reminder of the very noticeable and undesirable impacts that biological pollutants can have on our Great Lakes, and why preventing their introduction is a duty that all of Michigan's citizens share.

For the past two-and-a-half years, my office has undertaken efforts to protect the Great Lakes by preventing aquatic nuisance species from invading our delicate ecosystem. The prevention of these devastating biological pollutants is vital to preserving Michigan's waterways.

Carried in the ballast water of large oceangoing vessels when they enter the Great Lakes, aquatic nuisance species wreak extraordinary economic, social, and ecological havoc. These biological pollutants not only threaten the Great Lakes ecosystem, but also

pose a significant economic threat to the State of Michigan. Commercial and recreational fishing, boating, beaches, and tourism all suffer from the harmful effects of these species. The estimated annual cost of controlling one aquatic nuisance species – zebra mussels – in the Great Lakes is between \$100 and \$400 million¹. These aquatic nuisance species continue to enter the Great Lakes at an alarming rate.

The Federal agencies have done little to prevent the introduction of aquatic nuisance species via ballast water discharges. Since 1973, the EPA has exempted by regulation "discharge[s] incidental to the normal operation of a vessel" from the Clean Water Act's National Permit Discharge Elimination System program. The agency applied this exemption to ballast water discharges, even though the discharges introduce biological pollutants.

As you are also aware the Coast Guard has been given the authority to regulate ballast water discharges through what was originally the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990. However, this regulatory scheme has been ineffective, primarily because of a rule that allows ships to declare that they have no ballast on board (NOBOB) even when there may be residual water and sludge that could contain aquatic nuisance species. In a 2005 report², the Great Lakes Environmental Research Lab concluded that NOBOB ships do introduce aquatic nuisance species to the

¹ From a report on a joint hearing by the Subcommittee on Coast Guard and Maritime Transportation and Subcommittee on Water Resources and Environment, "Ballast Water Management: New International Standards and National Invasive Species Act Reauthorization," on March 25, 2004.

² Assessment of Transoceanic NOBOB Vessels and Low-Salinity Ballast Water as Vectors for Non-indigenous Species Introductions to the Great Lakes, Final Report co-managed by NOAA - GLERL, July 1, 2001-December 31, 2003.

Great Lakes, and the greatest threat of invasive species introduction to the Great Lakes is ships with fresh or low-salinity residual ballast water.

Thus, the federal government's actions have been completely unsuccessful. Biological pollutants continue to enter the Great Lakes because of a combination of EPA inaction and the Coast Guard's NOBOB exemption. As of 2001, the Great Lakes Environmental Research Lab of the National Oceanic and Atmospheric Administration estimated that there were 162 aquatic nuisance species in the Great Lakes, of which twelve had entered since 1990³.

On July 12, 2004 a petition was filed with the Coast Guard requesting rulemaking to close the NOBOB loophole. The Coast Guard solicited public comment on the best way to address the NOBOB problem and, in July of this year, stated that it was developing a ballast water discharge standard to be used to approve ballast water treatment systems. So far it has not committed to any timeline. Last week, the Coast Guard issued best management practices for NOBOB vessels entering the Great Lakes. Unfortunately, this document is described as a policy and the best management practices are only recommendations that cannot be enforced. I do not believe the Coast Guard should be the primary federal agency, nonetheless, until the EPA enacts much needed regulation, the Coast Guard should quickly close the NOBOB loophole. It is essential to

³ New Zealand mud snail, Quagga mussel, digenean fluke, cyclopoid copepod, digenean fluke, mixosporidian, amphipod, blueback herring, fish-hook waterflea, 2 types of harpacticoid copepod, and waterflea.

the future of our Great Lakes that we close our borders to these invading destructive biological pollutants.

My primary recommendation, however, is that the EPA move quickly to regulate ballast water discharges under the Clean Water Act. In July 2004, my office along with Attorneys General from five other Great Lakes States submitted an amicus brief in a lawsuit in the federal District Court for the Northern District Court of California arguing that the EPA's exemption for ballast water discharges was unlawful and should be repealed. The Court ruled on March 31st of this year that the EPA's exemption was without authority and ordered the EPA to repeal the exemption. My office along with the other Great Lakes Attorneys General has now been granted intervener status and will ask the Court for a short timeline for the EPA to promulgate final regulations.

In the interim, the EPA has the authority to quickly develop general permits for classes of discharges. In addition, the EPA can require vessels to employ best management practices such as ballast water exchange in the ocean, a generally beneficial management practice that can reduce the risk of introducing biological pollutants. The Court will soon determine how the EPA is to regulate ballast water discharges under the Clean Water Act. While they wait for effective federal action, states such as Michigan can and should be able to try to slow the explosion of aquatic nuisance species.

With my support, Michigan recently amended its primary water quality protection statute to require permits, starting in January 2007. These permits will require all

oceangoing vessels operating in Michigan's ports to show they do not discharge aquatic nuisance species or that they use "environmentally sound technology and methods" to prevent discharge of aquatic nuisance species in ballast water. In addition, the law creates a multi-state coalition⁴ to promote existing laws that prohibit biological pollutants from being discharged. I supported this legislation and believe that it is the best way to protect the Great Lakes given the current lack of adequate federal regulation.

Unfortunately, Senate Bill 363, the "Ballast Water Management Act of 2005" is currently being considered by the Senate Commerce Committee. Senate Bill 363 would prohibit Michigan from imposing any requirements under its new state law that are inconsistent with federal requirements. Senate Bill 363 would also prohibit the United States Environmental Protection Agency from regulating ballast water discharges under the Clean Water Act. In addition, the new treatment standards will not apply to all vessels entering our waters until 2016. Moreover, the bill would keep the current Coast Guard regulations for the Great Lakes in place until the treatment standards go into effect, including the NOBOB loophole. I have joined other Great Lakes States' Attorneys General in a joint letter conveying our dismay that the bill would remove Clean Water Act jurisdiction and would preclude states from attempting to address the problem.

Our Great Lakes face devastating consequences if we continue to allow these biological pollutants to enter our waters unchecked. Michigan citizens daily rely on the Great Lakes for recreation, for drinking water, for environmental benefits, and for sustainable economic growth. The federal government has failed to protect our natural

⁴ Great Lakes Aquatic Nuisance Species Coalition

resources from the devastating effects of biological pollutants. Effective methods to address aquatic nuisance species are within our reach as a State and as a nation, and I encourage all of us gathered here today to work together to see them implemented. We must act to protect our natural resources so that our children do not have to remember the beaches of their childhood covered in biological pollution.

Thank you.